

Remarks

The Final Office Action mailed April 1, 2008 has been carefully considered. An RCE accompanies this Amendment. Reconsideration and allowance of the subject application, as amended, are respectfully requested.

Claims 1, 3, 4, 5, 8, 9, 11, 12, 13, 16, 17, 19, 20, 21, 24, 25 and 27 to 33 are currently pending. Claims 6, 7, 14, 15, 22, and 23 have been cancelled by this Amendment. Claims 30-33 have been added. Claims 1, 9, 17, and 25 have been amended to clarify the claimed subject matter. Support for the within claim amendments may be found at, *inter alia*, paragraphs 25 and 32 to 35 of the Specification.

In making the within claim amendments, Applicants are clarifying the claimed subject matter and are not acquiescing as to the validity and/or correctness of the rejections of the subject application and/or of the characterizations of the prior art in the Final Office Action. The within claim amendments are not intended to, and do not result in disclaimer, waiver, and/or estoppel vis-à-vis claim scope and/or equivalents.

In the Final Office Action, the Examiner has rejected the claims under 35 USC §103 as being unpatentable over Johnson et al. (U.S. Patent No. 6,732,230) in view of

Ser. No.: 10/716,932 Atty. Docket No.: P17159 Examiner: Verbrugge, Kevin

Jacobson et al. (U.S. Patent No. 5,615,352). Applicants respectfully submit that the rejection of the claims, as amended, cannot be maintained, and should be withdrawn.

All claim limitations must be considered material in judging the patentability of the claims against the prior art. MPEP §2143.03; *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976); *In re Wilson*, 424 F.2d 1382, 165 USPQ 494 (CCPA 1970). In determining the differences between the prior art and the claims, the question under 35 USC §103 is not whether the differences themselves would have been obvious, but whether the claimed combination of limitations, as a whole, would have been obvious. MPEP §2141.02; *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976). Rejections based on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with factual rationale to support a *prima facie* case of obviousness. In order for that reasoning and rationale to be proper, among other things, all of the claim limitations must be taught or suggested in the art relied upon by the Examiner. MPEP §2141 III; *KSR International v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007).

Johnson et al. discloses:

A system for automatically migrating a portion of a collection of information located on source data carrier(s) into an assemblage of data carriers, having: a computer memory for pass-through of a first strip of the collection; the assemblage has at least a first storage medium to

which at least a first sub-portion of the first strip is written from computer memory; and once the portion of the collection has been so migrated according to a predetermined structure, a remaining portion of the collection can be written to the source data carrier (to include the source data carrier in the assemblage), the remaining portion being ordered (crunched) in conformity with the predetermined structure. (Johnson's Abstract).

Jacobson et al discloses:

A method is described for enlarging the storage capacity of a hierarchical disk array data storage system which stores data according to different levels of redundancy, or RAID levels. The method includes first mapping the physical storage space into a first virtual storage space having a plurality of RAID areas that extend across multiple storage disks in the disk array and comprise multiple stripes of segments from each storage disk. The first virtual storage space is mapped into a second virtual storage space having multiple virtual blocks. To enlarge storage capacity, one or more storage disks are added to the hierarchic disk array. To assimilate the new storage capacity, data in a selected existing RAID area is moved to another area on the disk array of equal or greater

storage capacity. The mapping of the second virtual storage space to the first is updated to reflect the data movement. The physical storage space corresponding to the selected RAID area is then remapped into an expanded RAID area which spans across all storage disks, including the new disks. The process is repeated until all RAID areas in the hierarchic disk array have been expanded to include regions on the new storage disks. The capacity available to the second virtual storage space is modified to reflect the enlarged storage capacity. According to this method, data remains available to the user at all times during the enlargement process. (Jacobson et al.'s Abstract).

Suffice to note that neither of these references, whether taken singly or in combination, can be said to disclose or suggest the specific combination of features found in Applicants' claimed invention. For example, independent method claim 1, as amended, recites:

issuing a read request to request reading of at least one portion of data stored in a first storage device;

issuing a write request to request writing of the at least one portion of the data into one of a second storage device and at least one location in the first storage device, the at least one location being

comprised in a volume of a redundant array of inexpensive disks (RAID), the data being stored in a non-RAID volume in the first storage device;

in response, at least in part, to a request to access one or more other portions of the data stored in the non-RAID volume at least one of received and issued by one or more operating system processes while at least one of the reading and the writing is occurring, issuing an access request to request accessing of the one or more other portions of the data and accessing the one or more other portions of the data while the at least one of the reading and the writing is occurring;

after the writing, issuing a storage request to request storing in the first storage device and in the second storage device of an indication, at least in part, of at least one other portion of the data to be next read;
and

issuing another storage request to request storage in the first storage device and in the second storage device of configuration information indicating, at least in part, parameters of the non-RAID volume and of the RAID volume. (Independent claim 1, as amended).

All of the other currently pending independent claims, as amended, contain these limitations of claim 1, as amended, or similar limitations. Therefore, all of the currently pending claims, as amended, contain these or similar limitations, either directly or by depending from one of the independent claims, as amended. 35 USC §112, fourth paragraph.

These differences between the references and Applicants' claimed invention are advantageous. For example, although the limitations in the claims, as amended, are not limited to or bound by embodiments disclosed in the Specification, in an embodiment disclosed in Applicants' Specification, the above limitations of the claimed invention that are not disclosed or suggested in the art relied upon by the Examiner permit this embodiment to operate in a manner that is different from and advantageous compared to the technology disclosed in these references. See, e.g., paragraph 35 of the Specification.

Accordingly, since these advantageous features of the claimed invention are nowhere disclosed or suggested in the references relied upon by the Examiner, it is respectfully submitted that the references, whether taken singly or in any combination, would not anticipate or render obvious the claimed invention. Therefore, it is respectfully submitted that the Examiner's rejection of the claims, as amended, under 35 USC §103 as being unpatentable over Johnson et al. in view of Jacobson et al. cannot be maintained, and should be withdrawn.

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In the event that the Examiner believes that a telephone interview would advance the prosecution of this application, the Examiner is invited to call the undersigned attorney to initiate an interview.

In the event that any fees are due or payable in connection with this submission or in this application (including any applicable extension of time for response fees and/or RCE fees) please charge them to Deposit Account No. 50-4238. Likewise, please credit any overcharges to Deposit Account No. 50-4238.

Respectfully submitted,

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